IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1136 OF 2004

Shri Dattatray Pandurang Gharat ... Appellant (Ori.Plaintiff)

V/s

Shri Pushpasen Jagannath Patil & ors. ... Respondents

Ms. Gauri Godse for the appellant.

Mr. P.S. Dani for respondent Nos. 4 and 5.

CORAM: P.V. KAKADE, J.

DATED: 26TH JULY, 2005

P.C.:

1. The appellant has filed this appeal against the judgment and order passed by the Addl. District Judge, Raigad - Alibag dated 24.2.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr.Divn., Alibag dated 31.1.1994 dismissing the plaintiff's suit for specific performance in respect of the suit property against the decendants and consequently ordering refund of the earnest money of Rs.500/- with interest.

2. I have heard the learned counsel for both parties.

Perused the record.

3. The plaintiff filed the suit for specific performance of the contract between the parties with submission that the property bearing Survey No.200 Hissa No.1, admeasuring 40 Hector 7 Ares was agreed to be sold to the plaintiff by one Jagannath Patil and his daughter defendant No.2 Kasturi Jagannath Patil by an agreement dated 13.2.1983 for total consideration of Rs.82,000/-. It was the contention that Rs.500/- were paid by the plaintiff to the vendors as an earnest amount and balance was to be paid at the time of registration of the sale deed. It was alleged that, though the property was owned by Jagannath Patil exclusively, the name of one Navinchandra Khot and Shalini Khot were entered in the revenue record and also the name of Malti Madan Mhatre was there in the 7/12 extract. As per the terms of agreement, late Jagannath Patil agreed to get removed the names of said persons from the revenue record and after the removal of the names of the said persons from the revenue record, within six months agreement was to be executed. It was also submitted that, as per the terms of the agreement, the names of Shalini Navinchandra Khot and Navinchandra Khot were deleted and the names of legal heirs of Jagannath Patil were entered

on the death of Jagannath Patil. However, the name of Malti Madan Mhatre recorded as tenant was not deleted and, therefore, the sale deed could not be executed. It was further alleged that, after the death of Jagannath Patil, present defendants are his legal representatives and they are responsible for executing the sale deed in favour of the plaintiff as per the agreement executed by the deceased Jagannath Patil and defendant No.2. However, instead of doing that, defendants are attempting to alienate the suit property to third party for higher price and, therefore, though the plaintiff issued notice to defendants dated 20.4.1992, still steps were not taken to delete the name of Malti Madan Mhatre and hence the suit came to be filed.

Defendants contested the suit on various grounds inter-alia submitting that the allegations made by the plaintiff were incorrect and plaintiff had never showed his ready and willingness to perform his part of the contract. Defendants also raised various other objections and sought dismissal of the suit.

4. The learned Trial Judge, after hearing both parties and recording the evidence on the basis of available record, inter-alia came to the conclusion that the

plaintiff failed to prove that he was ready and willing to perform his part of the contract. It was also held that the plaintiff was not entitled to claim relief of specific performance and, as such, the suit came to be dismissed.

The appeal was carried to the District Court, Raigad. The Addl. District Judge, after hearing both parties, came to the conclusion that the findings recorded by the Trial Court were legal and proper and hence dismissed the appeal. Hence the present appeal.

5. At the outset, it must be noted that the learned counsel for the appellant raised the issue regarding readiness and willingness of the appellant to perform his part of the contract. It was urged on behalf of the appellant that, one of the conditions said to be coming in the way of execution of the contract was the deletion of name of Malti Mhatre, which was not deleted and, therefore, it was observed that the plaintiff was not ready and willing to perform his part of the contract. However, in order to show plaintiff’s readiness and willingness, the plaintiff appellant filed an application in the lower appellate Court being Civil Application No. 162 of 2000 under Order 41 Rule 27

seeking permission to bring on record the additional evidence pertaining to the revenue record entries showing that name of Malti Mhatre was removed from the record and, therefore, there was no impediment granting specific performance of the contract. For that purpose, Civil Application No. 1497 of 2004 is filed in this Court alongwith this second appeal for amendment of the appeal memo in order to incorporate the additional grounds in the appeal memo as grounds 2 to 14 which are in respect of questions to be raised with regard to the present status in view of the said subsequent event to show that the name of Malti Mhatre was no more on revenue record and, therefore, impediment in granting specific performance was removed.

6. However, it was submitted on behalf of the respondents that the issue regarding readiness and willingness to perform contract on plaintiff’s part must be seen till the period of filing of the suit and not by way of subsequent events and, therefore, the entire complex of the suit cannot be changed especially when concurrent findings were recorded to the effect that the plaintiff was not ready and willing to perform his part of the contract. In this regard, it must be noted that the learned counsel for the respondents also put

reliance on the ruling of the Apex Court in the case of **Veerayee Ammal v/s Seeni Ammal, reported in A.I.R. 2001 SC 2920,** wherein it was categorically observed by the Apex Court that the concurrent findings of facts were set aside by the High Court vide the judgment impugned in that appeal by holding that the alleged substantial question of law formulated by it stood proved in favour of the respondent-defendant had not established that she had been ready and willing to perform her part of the contract. On this aspect, the Apex Court held that the question of law formulated as substantial question of law, cannot, in any way, be termed to be question of law, much less, the substantial question of law. The question formulated, in fact, was the question of fact. In my considered view, this ratio laid down by the Apex Court in this case squarely applies to the present case because that is the only issue sought to be raised as substantial question of law. The learned counsel for the appellant also sought to put reliance on various judgments of the Apex Court. I have perused the said judgments. I must note that when concurrent findings are recorded by both the Courts below in this regard, there is no reason why this Court should reappreciate the evidence in this regard especially when perusal of judgments of both the Courts below show that there is no

perversity involved in appreciation of evidence on the said issue and, as such, in my view, this issue cannot be the substantial question of law and, therefore, cannot be considered even though it is held that there is subsequent event which has occurred and brought to the notice of this Court by Civil Application No. 1497 of 2004.

7. This aspect apart, both the Courts below also have recorded independent finding to the effect that the suit is also barred by provision of Sec.20-A of the Specific Relief Act. In fact, this issue is not raised at all on behalf of the appellant, neither in the appeal memo nor in the course of submissions made on behalf of the appellant. However, as can be seen from the judgment of both the Courts below, the observations made by the lower appellate Court in that regard are seen to be cogent and in fact based on the relevant record. It is also seen that evidence in that regard is appreciated properly and, therefore, it would brook no interference by this Court at this stage.

8. The learned counsel for the appellant also made submission with regard to the alleged delay in performance of the contract. In this regard, it was

submitted that, taking into account the facts and circumstances, there was no delay on the part of the plaintiff to seek specific performance. In support of this submission, the learned counsel for the appellant sought to put reliance on the Apex Court ruling in the case of **Mademsetty Satyanarayana v/s V.G. Yelloji Rao & ors., reported in A.I.R. 1965 SC 1405.** However, even taking into consideration the ratio of the said Apex Court ruling, I am inclined to hold that the issue of delay in performance of the contract is also the question of fact and at no time it can be considered as substantial question of law and, therefore, her submission in that regard also hold no merits.

8. Therefore, suffice is to say that the appeal has no merits and hence deserves to be dismissed and stands dismissed with no order as to costs.

Consequently, Civil Application Nos. 1496 of 2004 and 1497 of 2004 also stand disposed of with no order as to costs.

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